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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2003 63484

JOHN L. FOX, PT
55206 Airline 11C
Yucca Valley, CA 92284

A C C U S A T I O N

Physical Therapist License No. PT 26110
Physical Therapist Assistant No. AT 3875
Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about April 11, 2001, the Physical Therapy Board of California issued Physical Therapist License Number PT 26110 to John L. Fox, PT (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and expired on June 30, 2004, and is now delinquent. On or about May 22, 1995, the Physical Therapy Board issued Physical Therapist Assistant License Number AT 3875 to respondent. The Physical Therapist Assistant License expired on June 30, 2002, and is now delinquent.

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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2609 of the Code states:

The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

5. Section 2660 of the Code states:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

(a) Advertising in violation of Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Procuring or aiding or offering to procure or aid in criminal abortion.

(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Habitual intemperance.

(g) Addiction to the excessive use of any habit-forming drug.

(h) Gross negligence in his or her practice as a physical therapist.

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

(j) The aiding or abetting of any person to violate this chapter or any

1 regulations duly adopted under this chapter.

2 (k) The aiding or abetting of any person to engage in the unlawful practice
3 of physical therapy.

4 (l) The commission of any fraudulent, dishonest, or corrupt act which is
5 substantially related to the qualifications, functions, or duties of a physical
6 therapist.

7 (m) Except for good cause, the knowing failure to protect patients by
8 failing to follow infection control guidelines of the board, thereby risking
9 transmission of blood-borne infectious diseases from licensee to patient, from
10 patient to patient, and from patient to licensee. In administering this subdivision,
11 the board shall consider referencing the standards, regulations, and guidelines of
12 the State Department of Health Services developed pursuant to Section 1250.11 of
13 the Health and Safety Code and the standards, regulations, and guidelines
14 pursuant to the California Occupational Safety and Health Act of 1973 (Part 1
15 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing
16 the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health
17 care settings. As necessary, the board shall consult with the Medical Board of
18 California, the California Board of Podiatric Medicine, the Board of Dental
19 Examiners of California, the Board of Registered Nursing, and the Board of
20 Vocational Nursing and Psychiatric Technicians, to encourage appropriate
21 consistency in the implementation of this subdivision.

22 The board shall seek to ensure that licensees are informed of the responsibility of
23 licensees and others to follow infection control guidelines, and of the most recent
24 scientifically recognized safeguards for minimizing the risk of transmission of
25 blood-borne infectious diseases.

26 6. Section 2661.5 of the Code states:

27 (a) In any order issued in resolution of a disciplinary proceeding before
28 the board, the board may request the administrative law judge to direct any

1 licensee found guilty of unprofessional conduct to pay to the board a sum not to
2 exceed the actual and reasonable costs of the investigation and prosecution of the
3 case.

4 (b) The costs to be assessed shall be fixed by the administrative law judge
5 and shall not in any event be increased by the board. When the board does not
6 adopt a proposed decision and remands the case to an administrative law judge,
7 the administrative law judge shall not increase the amount of the assessed costs
8 specified in the proposed decision.

9 (c) When the payment directed in an order for payment of costs is not
10 made by the licensee, the board may enforce the order of payment by bringing an
11 action in any appropriate court. This right of enforcement shall be in addition to
12 any other rights the board may have as to any licensee directed to pay costs.

13 (d) In any judicial action for the recovery of costs, proof of the board's
14 decision shall be conclusive proof of the validity of the order of payment
15 and the terms for payment.

16 (e) (1) Except as provided in paragraph (2), the board shall not renew
17 or reinstate the license or approval of any person who has failed to pay all
18 of the costs ordered under this section.

19 (2) Notwithstanding paragraph (1), the board may, in its
20 discretion, conditionally renew or reinstate for a maximum of one year the
21 license or approval of any person who demonstrates financial hardship and
22 who enters into a formal agreement with the board to reimburse the board
23 within that one year period for those unpaid costs.

24 (f) All costs recovered under this section shall be deposited in the
25 Physical Therapy Fund as a reimbursement in either the fiscal year in
26 which the costs are actually recovered or the previous fiscal year, as the
27 board may direct.

28 7. Section 2661 of the Code states:

1 A plea or verdict of guilty or a conviction following a plea of nolo contendere
2 made to a charge of a felony or of any offense which substantially relates to the
3 qualifications, functions, or duties of a physical therapist is deemed to be a conviction
4 within the meaning of this article. The board may order the license suspended or
5 revoked, or may decline to issue a license, when the time for appeal has elapsed, or the
6 judgement of conviction has been affirmed on appeal or when an order granting probation
7 is made suspending the imposition of sentence, irrespective of a subsequent order under
8 Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of
9 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing
10 the accusation, information, or indictment.

11 8. California Code of Regulations, title 16, section 1399.20, states:

12 “For the purposes of denial, suspension or revocation of a license or approval,
13 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall
14 be considered to be substantially related to the qualifications, functions or duties of a
15 person holding a license or approval under the Physical Therapy Practice Act if to a
16 substantial degree it evidences present or potential unfitness of a person to perform the
17 functions authorized by the license or approval in a manner consistent with the public
18 health, safety or welfare. Such crimes or acts shall include but not be limited to the
19 following:

20 “(a) Violating or attempting to violate, directly or indirectly, or assisting in
21 or abetting the violation of, or conspiring to violate any provision or term of the
22 Physical Therapy Practice Act.

23 “(b) Conviction of a crime involving fiscal dishonesty arising out of or in
24 connection with the practice of physical therapy.

25 “(c) Violating or attempting to violate any provision or term of the
26 Medical Practice Act.”

27 9. Section 490 of the Code states:

28 “A board may suspend or revoke a license on the ground that the licensee has

1 been convicted of a crime, if the crime is substantially related to the qualifications,
2 functions, or duties of the business or profession for which the license was issued. A
3 conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action which a board is permitted to
5 take following the establishment of a conviction may be taken when the time for appeal
6 has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order
7 granting probation is made suspending the imposition of sentence, irrespective of a
8 subsequent order under the provisions of Section 1203.4 of the Penal Code.”

9 10. Section 493 of the Code states:

10 “Notwithstanding any other provision of law, in a proceeding conducted by a
11 board within the department pursuant to law to deny an application for a license or to
12 suspend or revoke a license or otherwise take disciplinary action against a person who
13 holds a license, upon the ground that the applicant or the licensee has been convicted of a
14 crime substantially related to the qualifications, functions, and duties of the license in
15 question, the record of conviction of the crime shall be conclusive evidence of the fact
16 that the conviction occurred, but only of that fact, and the board may inquire into the
17 circumstances surrounding the commission of the crime in order to fix the degree of
18 discipline or to determine if the conviction is substantially related to the qualifications,
19 functions, and duties of the licensee in question.

20 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
21 ‘registration.’”

22 11. California Code of Regulations, title 16, section 1398.6, states:

23 “(a) Each licensee shall report to the board each and every change of
24 residence address within 30 days after each change, giving both the old and new
25 address. In addition to the address of residence, a licensee may provide the board
26 with an alternate address of record. If an alternate address is the licensee's address
27 of record, he or she may request that the residence address not be disclosed to the
28 public.

1 “(b) Each licensee shall report to the board each and every change of name
2 within 30 days after each change, giving both the old and new names.

3 “(c) For purposes of this section, "licensee" includes any holder of an
4 active, delinquent, suspended or expired license, approval, certification or other
5 authorization issued by the board to practice physical therapy or electromyography
6 which is not canceled or revoked.”

7 **FIRST CAUSE FOR DISCIPLINE**

8 (Conviction of a Crime)

9 12. Respondent is subject to disciplinary action under sections 2660 subd. (d),
10 2661, 490, and 493 of the Code and California Code of Regulations Title 16, section 1399.20, in
11 that respondent was convicted of a crime substantially related to the qualifications, functions, or
12 duties of a physical therapist. The circumstances are as follows:

13 A. On or about June 16, 2003, respondent went to his ex-wife’s residence
14 looking for his cell phone. At the time, only the babysitter and respondent’s son were at
15 the residence. Respondent knocked on the door and was met by his son. The babysitter
16 told respondent not to enter the residence but respondent pushed the door open and
17 proceeded toward the kitchen. Respondent then telephoned his ex-wife, telling her that
18 he wanted his cell phone back and if she did not return it he would take something of
19 hers. After hanging up the phone, respondent walked towards his ex-wife’s room and
20 took her small gray safety deposit box and blue sapphire pendant. He then left the house
21 with both of these items telling the babysitter, “You can go ahead and call 911. I don’t
22 care.”

23 B. On or about June 16, 2003 Deputy Dieckhoff of the County of San
24 Bernardino’s Sheriff’s Department went to respondent’s place of employment. Deputy
25 Dieckhoff met with respondent and asked him where the pendant and safety deposit box
26 were located. Respondent told Deputy Dieckhoff that the pendant was at his residence
27 and the safety deposit box was located inside his truck out in the parking lot.

28 C. On or about June 16, 2003 respondent was arrested by the County of San

1 Bernardino Sheriff's Department for burglary.

2 D. On or about August 12, 2003, in case number FMB006022 of the Superior
3 Court of the State of California, County of San Bernardino, Joshua Tree District, in the
4 matter of *The People of the State of California v. John Logan Fox*, the court accepted a
5 plea bargain. Respondent was convicted by plea of *nolo contendere* of Unauthorized
6 Entry of a Dwelling (Pen. Code §602.5 subd. (a)) and the court dismissed the following
7 counts against respondent:

8 Count 1 - First Degree Residential Burglary (Pen. Code §459);

9 Count 2 - Attempted Extortion (Pen. Code §524);

10 Count 3 - Grand Theft of Personal Property (Pen. Code §487 subd. (a)); and

11 Count 4 - Dissuading a Witness from Prosecuting a Crime (Pen. Code §136.1
12 subd. (b)(2)).

13 E. As a result of this conviction, on or about August 12, 2003, respondent
14 was placed on probation for a period of 36 months under the following terms and
15 conditions: (1) violate no law other than minor traffic; (2) pay \$110.00 to Victim
16 Restitution Fund to the Court by October 15, 2003, including a 10% administration fee;
17 (3) serve thirty days in a San Bernardino County Jail Facility, with credit for time served
18 of 7 day(s), the balance is to be served in consecutive 48 hour periods from 6:00pm
19 Friday to 6:00pm Sunday, commencing on September 12, 2003; (4) attend and complete a
20 sixteen week Anger Management Program, enroll by September 2, 2003 and submit proof
21 of completion to the court by January 14, 2004; (5) have no contact with the victim, his
22 ex-wife, Lynette Fox, nor be within 100 yards of her home or person; and (6) complete
23 250 hours of Community Service by August 12, 2006.

24 F. The conviction of the crime of Unauthorized Entry of a Dwelling is
25 substantially related to the qualifications, functions, or duties of a physical therapist.

26 **SECOND CAUSE FOR DISCIPLINE**

27 (Conviction of a Crime)

28 13. Respondent is subject to disciplinary action under sections 2660 subd. (d),

1 2661, 490, and 493 of the Code and California Code of Regulations Title 16, section 1399.20, in
2 that respondent violated a term of his probation for his prior conviction of Unauthorized Entry of
3 a Dwelling (Pen. Code §602.5 subd. (a)). On or about January 9, 2004, respondent violated his
4 restraining order by failing to stay away from his ex-wife.

5 A. On or about April 7, 2004, in case number MMB009470 of the Superior
6 Court of the State of California, County of San Bernardino, Joshua Tree District, in the
7 matter of *The People of the State of California v. John Logan Fox*, respondent was
8 convicted by plea of *nolo contendere* of Disobeying a Court Order (Pen. Code §166 subd.
9 (a)(4)) in the offense charged in the complaint filed on January 29, 2004.

10 B. As a result of this conviction, on or about April 7, 2004, respondent was
11 placed on probation for a period of 36 months under the following terms and conditions:
12 (1) violate no law other than minor traffic; (2) pay \$110.00 to the Victim Restitution Fund
13 to the Court by June 1, 2004, including a 10% administration fee; (3) serve 180 days in
14 county jail, suspended pending successful completion of probation; and (4) have no
15 contact with the victim, his ex-wife, Lynette Fox, nor be within 100 yards of her
16 residence, employment or education.

17 C. The conviction of the crime of Disobeying a Court Order is substantially
18 related to the qualifications, functions, or duties of a physical therapist.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Failure to Notify Board of Change of Address)

21 14. Respondent is subject to disciplinary action under section 2660, subd. (i)
22 of the Code and California Code of Regulations Title 16, section 1398.6 subd. (a), in that
23 respondent failed to notify the Physical Therapy Board of California of his change of address
24 within 30 days of the change. The circumstances are as follows:

25 A. On or before January 1, 2004, respondent moved from his Quail Springs
26 address of record with the Board.

27 B. Changes of address must be submitted in writing to the Board within 30
28 days of the change pursuant to California Code of Regulations Title 16, section 1398.6(a).

1 C. Since on or before January 1, 2004, respondent has failed to notify the
2 Board in writing of his change of address.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Physical Therapy Board of California issue a
6 decision:

7 1. Revoking or suspending Physical Therapist License Number PT 26110,
8 issued to John L. Fox, PT;

9 2. Revoking or suspending Physical Therapist Assistant License Number AT
10 3875, issued to John L. Fox, PT;

11 3. Ordering John L. Fox, PT to pay the Physical Therapy Board of California
12 the reasonable costs of the investigation and enforcement of this case, pursuant to
13 Business and Professions Code section 2661.5;

14 4. Taking such other and further action as deemed necessary and proper.

15 DATED: 07/30/2004

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18 Original Signed By:
19 STEVEN K. HARTZELL
20 Executive Officer
21 Physical Therapy Board of California
22 State of California
23 Complainant
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